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8
9 Attorneys for Defendant FIA Card
10 Services, N.A., *erroneously sued as*
11 Bank of America

12
13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON
15 AT SPOKANE

16 GARY BRIGGS,

17 Plaintiff,

18 v.

19 BANK OF AMERICA,

20 Defendant.

)
)
) No. CV-11-05067-LRS
)
)
)

) STIPULATED PROTECTIVE
) ORDER AND ORDER
)
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21
22 **1. PURPOSES AND LIMITATIONS**

23 Disclosure and discovery activity in this action may involve production
24 of confidential, proprietary, or private information for which special protection
25 from public disclosure and from use for any purpose other than prosecuting this
26 litigation would be warranted. This Order does not confer blanket protections
on all disclosures or responses to discovery and that the protection it affords
extends only to the limited information or items that are entitled, under the

1 applicable legal principles, to treatment as confidential. As set forth in Section
2 10, below, this

3 Protective Order creates no entitlement to file confidential information
4 under seal; the procedures that must be followed and the standards that will be
5 applied when a party seeks permission from the Court to file material under seal
6 will be governed by applicable law.

7 **2. DEFINITIONS**

8 2.1 Party: any party to this action, including all of its officers,
9 directors, employees, consultants, retained experts, and outside counsel (and
10 their support staff).

11 2.2 Disclosure or Discovery Material: all items or information,
12 regardless of the medium or manner generated, stored, or maintained
13 (including, among other things, testimony, transcripts, or tangible things) that
14 are produced or generated in disclosures or responses to discovery in this
15 matter.

16 2.3 "Confidential" Information or Items: information (regardless of
17 how generated, stored or maintained) or tangible things that qualify for
18 protection under standards developed under F.R.Civ.P. 26(c).

19 2.4 Receiving Party: a Party that receives Disclosure or Discovery
20 material from a Producing Party.

21 2.5 Producing Party: a Party or non-party that produces Disclosure or
22 Discovery Material in this action.

23 2.6 Designating Party: a Party or non-party that designates information
24 or items that it produces in disclosures or in responses to discovery as
25 "Confidential."
26

2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.9 House Counsel: attorneys who are employees of a Party.

2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staff).

2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its/her/his counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.12 Professional Vendors: persons or entities that provide litigation support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

2.13 The protections conferred by this Order cover not only Protected Material (as defined above), but also all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

1 **4. DURATION**

2 2.14 Even after the termination of this litigation, the confidentiality
3 obligations imposed by this Order shall remain in effect until a Designating
4 Party agrees otherwise in writing or a court order otherwise directs. This Order
5 shall remain in full force and effect and each person subject to this Order shall
6 continue to be subject to the jurisdiction of this Court for the purposes of
7 enforcement of the confidentiality terms of this Order. Within seventy-five (75)
8 days after termination of this lawsuit, all Confidential Information and all
9 copies of same (other than Litigation Documents and attorney work product
10 containing references to such information) shall be returned to the Producing
11 Party or made available for pick-up at its cost, or alternatively destroyed. All
12 counsel of record shall make certification of compliance herewith and shall
13 deliver the same to counsel for the Producing Party not more than 45 days after
14 receiving the written notice required under this Paragraph.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for
17 Protection. Each Party or non-party that designates information or items for
18 protection under this Order must use good faith efforts to limit any such
19 designation to specific material that qualifies under the appropriate standards. A
20 Designating Party must use good faith efforts to designate for protection only
21 those parts of material, documents, items, or oral or written communications
22 that qualify – so that other portions of the material, documents, items, or
23 communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited.
26 Designations that are shown to be clearly unjustified, or that have been made

1 for an improper purpose (*e.g.*, to unnecessarily encumber or retard the case
2 development process, or to impose unnecessary expenses and burdens on other
3 parties), may expose the Designating Party to sanctions.

4 If it comes to a Party's or a non-party's attention that information or
5 items that it designated for protection do not qualify for protection, that Party or
6 non-party must promptly notify all other parties that it is withdrawing the
7 mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided
9 in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
10 otherwise stipulated or ordered, material that qualifies for protection under this
11 Order must be clearly so designated before the material is disclosed or
12 produced.

13 Designation in conformity with this Order requires:

14 a. for information in documentary form (apart from transcripts
15 of depositions or other pretrial or trial proceedings), that the Producing Party
16 affix the legend "CONFIDENTIAL" at the top or bottom of each page that
17 contains protected material. If only a portion or portions of the material on a
18 page qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

20 A Party or non-party that makes original documents or materials
21 available for inspection need not designate them for protection until after the
22 inspecting Party has indicated which material it would like copied and
23 produced. During the inspection and before the designation, all of the material
24 made available for inspection shall be deemed "CONFIDENTIAL." After the
25 inspecting Party has identified the documents it wants copied and produced, the
26 Producing Party must determine which documents, or portions thereof, qualify

1 for protection under this Order, then, before producing the specified documents,
2 the Producing Party must affix the legend "CONFIDENTIAL" at the top or
3 bottom of each page that contains Protected Material. If only a portion of the
4 material on a page qualifies for protection, the Producing Party also must
5 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
6 in the margins).

7 b. for testimony given in deposition or in other pretrial or trial
8 proceedings, that the Party or non-party offering or sponsoring the testimony
9 identify on the record, before the close of the deposition, hearing, or other
10 proceeding, all protected testimony. When it is impractical to identify
11 separately each portion of testimony that is entitled to protection, and when it
12 appears that substantial portions of the testimony may qualify for protection, the
13 Party or nonparty that sponsors, offers, or gives the testimony may invoke on
14 the record (before the deposition or proceeding is concluded) a right to have up
15 to 20 days to identify the specific portions of the testimony as to which
16 protection is sought. Only those portions of the testimony that are appropriately
17 designated for protection within the 20 days shall be covered by the provisions
18 of this Stipulated Protective Order.

19 Transcript pages containing Protected Material must be separately bound
20 by the court reporter, who must affix to the top or bottom of each such page the
21 legend "CONFIDENTIAL," as instructed by the Party or nonparty offering or
22 sponsoring the witness or presenting the testimony.

23 c. for information produced in some form other than
24 documentary, and for any other tangible items, that the Producing Party affix in
25 a prominent place on the exterior of the container or containers in which the
26 information or item is stored the legend "CONFIDENTIAL." If only portions of

1 the information or item warrant protection, the Producing Party, to the extent
2 practicable, shall also identify the protected portions.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an
4 inadvertent failure to designate qualified information or items as “Confidential”
5 does not, standing alone, waive the Designating Party’s right to secure
6 protection under this Order for such material. If material is appropriately
7 designated as “Confidential” after the material was initially produced, the
8 Receiving Party, on timely notification of the designation, must make
9 reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
13 Party’s confidentiality designation is necessary to avoid foreseeable substantial
14 unfairness, unnecessary economic burdens, or a later significant disruption or
15 delay of the litigation, a Party does not waive its right to challenge a
16 confidentiality designation by electing not to mount a challenge promptly after
17 the original designation is disclosed.

18 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
19 Designating Party’s confidentiality designation must do so in good faith and
20 must begin the process by conferring directly with counsel for the Designating
21 Party. The Parties shall adhere to the procedures set forth in Civil Local Rule
22 37.1 in conducting the meet and confer conference. In conferring, the
23 challenging Party must explain the basis for its belief that the confidentiality
24 designation was not proper and must give the Designating Party ten (10) days to
25 review the designated material, to reconsider the circumstances, and, if no
26 change in designation is offered, to explain the basis for the chosen designation.

1 A challenging Party may proceed to the next stage of the challenge process only
2 if it has engaged in this meet and confer process first.

3 6.3 Formal Challenge to Designation. If, after engaging in the meet
4 and confer process, a challenging Party still contends that a confidentiality
5 designation was not proper, the challenging Party may at any time give written
6 notice to the Designating Party stating in detail its objection to the
7 confidentiality designation. Such written notice must specifically identify the
8 challenged material and set forth in detail the legal basis for the challenge.

9 THE DESIGNATING PARTY HAS TWENTY-FIVE (25) DAYS
10 FROM RECEIPT OF SUCH WRITTEN NOTICE TO APPLY TO THE
11 COURT FOR AN ORDER SPECIFICALLY DESIGNATING THE
12 DISCLOSURE OR DISCOVERY MATERIAL AT ISSUE AS
CONFIDENTIAL. THE BURDEN OF PERSUASION TO ESTABLISH
GOOD CAUSE IN ANY SUCH CHALLENGE PROCEEDING SHALL BE
ON THE DESIGNATING PARTY.

13 6.4 Treatment of Information While Challenge is Pending.

14 6.5 Notwithstanding any challenge to the designation of Disclosure or
15 Discovery Material as confidential, all materials designated as Confidential
16 must be treated as such and subject to this order until one of the following
17 occurs:

18 a. the Designating Party withdraws its confidentiality
19 designation in writing; or

20 b. the Designating Party fails to apply to the Court for an order
21 designating the material confidential within the time period specified above
22 after receipt of a written challenge to such designation; or

23 c. the Court decides the material at issue is not subject to
24 protection as confidential under this order.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material
3 that is disclosed or produced by another Party or by a non-party in connection
4 with this case only for prosecuting, defending, or attempting to settle this
5 litigation. Such Protected Material may be disclosed only to the categories of
6 persons and under the conditions described in this Order. When the litigation
7 has been terminated, a Receiving Party must comply with the provisions of
8 section 11, below (FINAL DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at
10 a location and in a secure manner that ensures that access is limited to the
11 persons authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the Court or permitted in writing by the Designating
14 Party, a Receiving Party may disclose any information or item designated
15 CONFIDENTIAL only to:

16 a. the Receiving Party’s Outside Counsel of record in this
17 action, as well as employees of said Counsel to whom it is reasonably necessary
18 to disclose the information for this litigation and who have signed the
19 “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit
20 A;

21 b. the named parties to this litigation and the officers, directors,
22 and employees (including House Counsel) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the
24 “Agreement to Be Bound by Protective Order” (Exhibit A);

1 c. experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this litigation and who have signed
3 the "Agreement to Be Bound by Protective Order" (Exhibit A);

4 d. the Court and its personnel;

5 e. court reporters and videographers, and their staffs, present at
6 any hearing, deposition, or trial who have signed the "Agreement to Be Bound
7 by Protective Order" (Exhibit A);

8 f. professional vendors to whom disclosure is reasonably
9 necessary for this litigation and who have signed the "Agreement to Be Bound
10 by Protective Order" (Exhibit A);

11 g. during their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who have signed the "Agreement to Be
13 Bound by Protective Order" (Exhibit A). Pages of transcribed deposition
14 testimony or exhibits to depositions that reveal Protected Material must be
15 separately bound and identified as "Confidential" by the court reporter and may
16 not be disclosed to anyone except as permitted under this Stipulated Protective
17 Order; and

18 h. the author of the document or the original source of the
19 information.

20
21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

23 If a Receiving Party is served with a subpoena or an order issued in other
24 litigation that would compel disclosure of any information or items designated
25 in this action as "CONFIDENTIAL," the Receiving Party must so notify the
26 Designating Party, in writing (by fax, if possible) immediately and in no event

1 more than three (3) court days after receiving the subpoena or order. Such
2 notification must include a copy of the subpoena or court order.

3 The Receiving Party also must immediately inform in writing the Party
4 who caused the subpoena or order to issue in the other litigation that some or all
5 the material covered by the subpoena or order is the subject of this Protective
6 Order. In addition, the Receiving Party must deliver a copy of this Stipulated
7 Protective Order promptly to the Party in the other action that caused the
8 subpoena or order to issue.

9 The purpose of imposing these duties is to alert the interested parties to
10 the existence of this Protective Order and to afford the Designating Party in this
11 case an opportunity to try to protect its confidentiality interests in the court from
12 which the subpoena or order issued. The Designating Party shall bear the
13 burdens and the expenses of seeking protection in that court of its confidential
14 material – and nothing in this Order should be construed as authorizing or
15 encouraging a Receiving Party in this action to disobey a lawful directive from
16 another court.

17 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has
19 disclosed Protected Material to any person or in any circumstance not
20 authorized under this Stipulated Protective Order, the Receiving Party must
21 immediately (a) notify in writing the Designating Party of the unauthorized
22 disclosures, (b) use its best efforts to retrieve all copies of the Protected
23 Material, (c) inform the person or persons to whom unauthorized disclosures
24 were made of all the terms of this Order, and (d) request such person or persons
25 to execute the “Acknowledgment and Agreement to Be Bound” that is attached
26 hereto as Exhibit A.

1 **10. FILING PROTECTED MATERIAL**

2 Without written permission from the Designating Party or a court order
3 secured after appropriate notice to all interested persons, a Party may not file in
4 the public record in this action any Protected Material. A Party that seeks to
5 file under seal any Protected Material must comply with applicable law.

6 **11. FINAL DISPOSITION**

7 **11.1 Return Of Protected Material After Final Disposition By**
8 **Parties**: Unless otherwise ordered or agreed in writing by the Producing Party,
9 within seventy-five (75) days after the final termination of this action, each
10 Receiving Party must return all Protected Material to the Producing Party. As
11 used in this subdivision, “all Protected Material” includes all copies, abstracts,
12 compilations, summaries or any other form of reproducing or capturing any of
13 the Protected Material. With permission in writing from the Designating Party,
14 the Receiving Party may destroy some or all of the Protected Material instead of
15 returning it. Whether the Protected Material is returned or destroyed, the
16 Receiving Party must submit a written certification to the Producing Party (and,
17 if not the same person or entity, to the Designating Party) by the seventy-five
18 day deadline that identifies (by category, where appropriate) all the Protected
19 Material that was returned or destroyed and that affirms that the Receiving
20 Party has not retained any copies, abstracts, compilations, summaries or other
21 forms of reproducing or capturing any of the Protected Material.
22 Notwithstanding this provision, Counsel are entitled to retain an archival copy
23 of all pleadings, motion papers, transcripts, legal memoranda, correspondence
24 or attorney work product, even if such materials contain Protected Material.
25 Any such archival copies that contain or constitute Protected Material remain
26 subject to this Protective Order as set forth in Section 4 (DURATION), above.

116589.0316/5117554.1

1 Kirk D. Miller, P.S.

LANE POWELL pc

2
3 s/ Kirk Miller

4 Kirk Miller, WSBA 40025
5 Attorney for Plaintiff

By s/John S. Devlin

John S. Devlin III, WSBA # 23988
Abraham K. Lorber, WSBA # 40668
Attorneys for Defendant FIA Card
Services, N.A., *erroneously sued as*
Bank of America

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11 **ORDER**

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13 IT IS SO ORDERED.

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15 Dated this 5th day of July, 2011.

16
17 s/Lonny R. Suko

18 Lonny R. Suko
19 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Eastern District of
Washington on _____ [date] in the case of *Briggs v. Bank of America*, No.
CV-11-5067-LRS. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Protective Order to any person or
entity except in strict compliance with the provision of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the
terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my Washington agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

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1 Date: _____

2 City and State where sworn and signed: _____

3 _____.

4 Printed name: _____

5 Signature: _____

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STIPULATED PROTECTIVE ORDER - 16
Case No. CV-11-05067-LRS

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